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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

ELIZABETH KARNAZES, Plaintiff and Appellant, v. JOHN J. HARTFORD et al., Defendants and Respondents.	A135069 (San Francisco County Super. Ct. No. CGC-08-483029)

Elizabeth Karnazes, in propria persona, appeals from an order granting defendant John J. Hartford's motion to quash service of the summons and complaint. She contends that the trial court erred in granting the motion because the service of process on Hartford substantially complied with the statute. We affirm.

I. FACTUAL BACKGROUND[1]

Karnazes sued Hartford, her former attorney, and other defendants for intentional torts, negligence, fraud, breach of contract, and other causes of action and filed a complaint on December 8, 2008. She alleged that Hartford fraudulently prevented her from enforcing a lien on certain settlement proceeds. Almost three years later she filed a first amended complaint on December 6, 2011. Karnazes maintains that a summons and the first amended complaint were properly served on Hartford on the same day. Hartford

[1] In the interests of justice, we grant Karnazes's motion to augment the record on appeal to include the documents Hartford filed in the trial court. (Cal. Rules of Court, rule 8.155(a)(1)(A); *McCarthy v. Mobile Cranes, Inc.* (1962) 199 Cal.App.2d 500, 502 [in practice, augmentation of the record is liberally pursued].)

moved to quash service of the summons on December 27, 2011. He contended that he was never personally served with any papers. Karnazes opposed the motion, arguing that Hartford avoided service of process by hiding in his residence and refusing to answer his door. In a declaration submitted in support of the opposition, Trevor Johnson, the process server, stated that he knocked on the door of Hartford's residence and saw him in the residence. Johnson told Hartford that he had legal service of process for him, but Hartford did not answer the door. Johnson announced that he was leaving legal service of process documents on the doorstep and left the summons and first amended complaint at Hartford's front door.

The trial court granted Hartford's motion to quash service, finding that he was not served in accordance with the rules for personal service. In making this finding, the trial court assumed that all the statements made by Johnson in his declaration were true. This appeal timely followed. (See Code Civ. Proc.,[2] § 904.1 (a)(3).)

II. DISCUSSION

A. Standard of Review

The standard of review on an appeal from an order granting a motion to quash service of summons is as follows: "[w]hen there is conflicting evidence, the trial court's factual determinations are not disturbed on appeal if supported by substantial evidence." (*Serafini v. Superior Court* (1998) 68 Cal.App.4th 70, 77.) However, "[w]hen no conflict in the evidence exists . . . the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record." (*Ibid*.)

B. Karnazes Failed to Effect Personal Service of Process upon Hartford

Karnazes contends that the service of process upon Hartford substantially complied with the statute. We cannot agree.

Section 415.10 provides in pertinent part: "A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served." Personal service means that the summons and complaint "were personally

[2] Subsequent statutory references are to the Code of Civil Procedure.

delivered to, i.e., handed to, defendant." (*American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 389 (*American Express*).) Once the summons and complaint are handed to defendant, "then he could be said to have been 'personally served.' " (*Ibid.*)

There are other ways in which service may be effected. For example, a defendant may be personally served "by delivering a copy of the summons and complaint to an agent authorized to accept service on behalf of that defendant. [Citations.]" (*American Express, supra,* at p. 389.) Alternatively, individual defendants may also be served through substitute service " 'by leaving a copy of the summons and complaint at the person's dwelling house . . . in the presence of a competent member of the household, or a person apparently in charge of [defendant's] office, place of business, or usual mailing address.' " (*Ibid.*) The person in charge must be " 'at least 18 years of age, who shall be informed of the contents' " of the legal documents. (*Ibid.*) Thereafter, however, a copy of the summons and complaint must be mailed "by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left." (*Ibid.*)

More importantly, however, "an individual may be served by substitute service only after a good faith effort at personal service has first been made: the burden is on the plaintiff to show that the summons and complaint 'cannot with reasonable diligence be personally delivered' to the individual defendant." (*American Express, supra,* 199 Cal.App.4th at p. 389; § 415.20, subd. (b).) To qualify as reasonable diligence, two or three attempts must first be made to personally serve defendant. (*American Express, supra,* at p. 389.)

Here, Johnson failed to effect personal service on Hartford, and made no attempts at effecting substitute service. While he averred that he saw Hartford in his residence and told him that he was there to serve legal process of documents, he did not hand the papers to Hartford, but simply left them on Hartford's doorstep. Under these circumstances,

personal service of process was incomplete. (*American Express, supra,* 199 Cal.App.4th at p. 389.)

The *American Express* case is instructive. There, as in the case here, the process server simply left the summons and complaint on the defendant's doorstep. (*American Express, supra,* 199 Cal.App.4th at p. 388.) While the process server filed a declaration averring that he personally served the defendant, the defendant showed that he was not the person described in the process server's proof of service, which described an Asian male with black hair, a description which did not fit the defendant. (*Id.* at p. 390.) The court determined that the proof of service was false or alternatively that it did not show personal service by leaving a copy with someone other than the defendant together with some indication that the person was authorized to accept service on the defendant's behalf. (*Ibid.*) Here, as well, Johnson, by leaving the summons and complaint on Hartford's doorstep, did not comply with the statutory requirements of either personal service or substituted service. Accordingly, the court properly granted the motion to quash service.

Relying on *Pasadena Medi-Center Associates v. Superior Court* (1973) 9 Cal.3d 773, 778, Karnazes urges that the service of process upon Hartford should be deemed to have complied with the statute because the provisions of section 416.10 are to be liberally construed. In *Pasadena*, the court upheld service of process on an agent of a corporation who was not in fact the corporation's secretary-treasurer. (*Id.* at pp. 775, 778–779.) Reasoning that section 416.10 is to be liberally construed, the court concluded that although the person served was not the corporation's secretary-treasurer, the corporation's designation of the agent as its secretary-treasurer on its application for a stock permit conferred ostensible authority on him to accept service on the corporation's behalf and thus sufficiently complied with the statute. (*Id.* at pp. 781, 783.) Here, by contrast, Johnson did not effect service on Hartford or upon an agent. Hence, even if we construed section 416.10 liberally, Karnazes failed to substantially comply with the statute. (See *American Express, supra,* 199 Cal.App.4th at p. 393.)

In re Ball (1934) 2 Cal.App.2d 578 (*Ball*), upon which Karnazes relies, is also distinguishable. There, the process server had previously served the petitioner in prior litigation. (*Ball*, *supra*, 2 Cal.App.2d at pp. 578–579.) He approached the petitioner at the same place where prior service had been accomplished, and when within about 12 feet of him, said, " 'I have here another one of those things for you.' " (*Id*. at p. 579.) As he started to walk away, the petitioner replied, " 'You have nothing for me.' " (*Ibid*.) The server then tossed the papers to the petitioner, which landed a few feet from him, and said, " 'Now you are served.' " (*Ibid*.) Although the petitioner never picked up the papers, the court held that "when men are within easy speaking distance of each other *and* facts occur that would convince a reasonable man that personal service of a legal document is being attempted, service cannot be avoided by denying service and moving away without consenting to take the document in hand." (*Ibid.*, emphasis added.)

Here, however, Johnson never attempted to hand the papers to Hartford, nor was he ever in close speaking proximity to him. To the contrary, he never came face to face with Hartford, who never answered the door to his residence. Under these circumstances, Karnazes was required to exercise reasonable diligence at further attempts at personal service before relying on substitute service.[3]

In sum, personal service of process was not effected upon Hartford. Nor were any attempts at substitute service made. On these facts, the trial court properly granted the motion to quash service.

III. DISPOSTION

The judgment is affirmed.

[3] The record shows that Johnson's attempt to effect service of process on December 6, 2011 was made on the last day before the statute of limitations on the action expired.

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Rivera, J.

We concur:

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Ruvolo, P.J.

_____
Reardon, J.